

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 2019-362-A

IN RE:)	
Rulemaking for the Public Service)	<u>JOHNSON DEVELOPMENT</u>
Commission to Create a New Regulation 103-)	<u>ASSOCIATES, INC.'S REPLY</u>
811.5 Role of the Qualified Independent Third-)	TO THE COMMENTS OF DUKE
Party Consultant and Expert and the)	ENERGY CAROLINAS, LLC, DUKE
Commissioners' Reliance on the Contents of)	ENERGY PROGRESS, LLC, AND
the Qualified Independent Third-Party)	DOMINION ENERGY SOUTH
Consultant and Expert's Report)	CAROLINA, INC.
)	
)	
)	

Johnson Development Associates, Inc. (“JDA”), by and through its undersigned counsel, pursuant to Rule 103-818 of the Rules and Regulations of the Public Service Commission of South Carolina (the “Commission”), hereby submits these comments in the above-referenced matter in further support of the Commission’s rule promulgating the role of the qualified, independent third-party consultant under S.C. Code Ann. § 58-41-20(I), and replying in opposition to the comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) and Dominion Energy South Carolina, Inc. (“Dominion”) filed this afternoon.

The written comments provided herein are made in addition to the oral and written comments previously submitted in this matter, all of which are expressly renewed and incorporated as if stated here again.¹

¹ JDA initially filed written comments and proposed language for Regulation 103-811.5 on February 13, 2020. Later, on October 2, 2020, JDA filed written comments supporting the draft version of Regulation 103-811.5 published by the Commission. During and shortly after the November 4, 2020 hearing, JDA provided extensive oral and written comments supporting the Commission’s proposed Regulation 103-811.5 as drafted.

Background and Interest

1. As the Commission recalls, South Carolina-based JDA, a developer of solar energy and other commercial real estate projects, appeared through the undersigned counsel and presented comments to the Commission at the November 4, 2020 hearing in this matter. Later that day, in addition to the comments presented at hearing, JDA submitted a written summary of its hearing comments in support of the Commission's proposed rule and to respond to and oppose the counterproposals of Duke and Dominion.

2. At the close of the hearing, Vice Chair Belser, presiding, advised the parties that the administrative record in this matter would remain open for five (5) days following the hearing. During that time period, the parties had the opportunity to file additional written comments for the record.

3. Duke and Dominion, through their respective counsel, submitted additional comments opposing the Commission's draft Regulation 103-811.5 and seeking substantial revisions.

Comments and Recommendations

4. As the Commission already knows, JDA strongly supports the adoption of the regulation precisely as drafted. JDA refers the Commission to its previous submitted comments without repeating them in full here.

5. However, the new comments submitted today merit a short reply for the Commission's consideration.

6. First, Duke now proposes what it describes as a "limited discovery" schedule expressly aimed to "vet the [third-party] expert's report." Limited or not, the aim of "vetting" the independent third-party's report through discovery, if permitted, turns the Act on its head. Rather, the purpose of Section 58-41-20(I) is to provide the Commission with an independent adviser who can *vet* the conclusions of the utilities—not the other way around.

7. Under Section 58-41-20(I), it is the *utilities* that are to respond to the informational needs of the independent third-party so that a report can be issued concerning the *utilities*' calculations of avoided costs. Discovery as proposed by Duke, however, improperly shifts the burdens away from the utilities to the independent third-party. If accepted, that would run counter to the plain meaning and design of Section 58-41-20(I).

8. In contrast, the Commission's draft Regulation 103-811.5, which prevents the parties from conducting discovery against independent third-party, furthers the purpose of the Act and keeps the focus on an evaluation of the utilities' work. Accordingly, the Commission should move forward with the regulation without revision.

9. Second, Duke and Dominion continue to take issue with the concept that the independent third-party is more properly thought of having a relationship with the Commission similar to its staff.

10. Again, under the Act, it is the Commission that is employing a third-party to assist it in "carrying out *its* duties." Section 58-41-20(I)(emphasis added). The qualified independent third-party's express duties under law are to the Commission. *See* Section 58-41-20(I).

11. Duke reads Section 58-41-20(I) and language dealing with *ex parte* communications as evidence that the independent third-party is to be treated like a party. However, the better reading in the context of the Act and the relationship between the independent third-party and the Commission is that the independent third-party is prevented from *ex parte* communications with the parties much like the Commission. *See* Section 58-41-20(I).

12. Accordingly, Regulation 103-811.5 as drafted fits well with the language of the Act on these points. The rule as currently drafted regulates how the independent third-party may or may not communicate with parties to a proceeding, clarifies that the independent third-party may communicate with the Commission and its staff, and further prevents discovery or examination of the independent

third-party. All of this flows from the Act and is consistent with the relationship created between the independent third-party and the Commission. None of that should be disturbed or revised.

Conclusion

Based on the foregoing, Johnson Development Associates, Inc., respectfully requests that the regulatory language implementing Section 58-41-20(I) as proposed by the Commission be adopted without revisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one copy of the **JOHNSON DEVELOPMENT ASSOCIATES, INC.'S REPLY TO THE COMMENTS OF DUKE ENERGY CAROLINAS, LLC, DUKE ENERGY PROGRESS, LLC, AND DOMINION ENERGY SOUTH CAROLINA, INC.** to the persons named below at the addresses set forth via electronic mail:

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